



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Modification of White Slough Lease Agreement with Bechthold-Kirschenman Farms

MEETING DATE: September 7, 1994

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council approve the proposed modifications to the lease agreement: (1) decreasing the annual rental amount until water is again available from the Delta or until effluent can be provided by the City of Lodi; and
(2) modifying the wording of the termination clause.

BACKGROUND INFORMATION: On July 25, 1994, the Water/Wastewater Superintendent received the attached letter from Bechthold-Kirschenman Farms (see Exhibit 1). The attached memo dated August 9, 1994 (Exhibit 2), from the Water/Wastewater Superintendent, describes Bechthold-Kirschenman Farms' request and recommends a temporary rent reduction.

Attached as Exhibit 3 is a copy of the lease agreement with the recommended changes shown on Page 1 and Page 6R. The modifications on Page 1 change the rental price and those on Page 6R modify the termination clause providing the City with additional flexibility if it should desire to use the property as a soccer complex, golf course, wetlands, etc. The City Attorney has reviewed and approved the wording of these proposed modifications.

FUNDING: Not applicable.

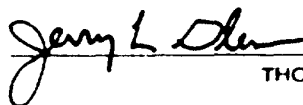

Jack L. Ronsko
Public Works Director

JLR/im

Attachments

cc: City Attorney
Water/Wastewater Superintendent
Assistant Wastewater Treatment Superintendent
Bechthold-Kirschenman Farms

APPROVED



THOMAS A. PETERSON
City Manager



recycled paper

City of Lodi

Fram Forkas

This is concerning the 270 More Van Ruiten Farm. As you know, we received a letter from the State Water Resources Control Board on June 12, informing us of the unavailability of water from White Slough.

This is the first time in my memory they have done this. Fortunately at the present time we have HLB planted. It will suffer and will lose some production but will not be a great loss. We understand that this farm was purchased for future expansion and the effluent from your White Slough plant would first meet the needs of the original acreage.

The excess would be available to us. Up until July 1st we were able to irrigate one cutting (two irrigations) out of four cuttings (eight irrigations) from the plant. The two wells on the farm will approx. irrigate one half of the farm by running 24 hours a day. In the past (5 years) with the slough pump we only ran 10 to 12 hours a day. Our problem is, the HLB is five years old and has to come out. With the restrictions on what we can irrigate with effluent, Corn is the only crop. The problem is corn will take $\frac{1}{3}$ more water than HLB.

Corn has to be irrigated every 10 days or three times a month, where as alf is only twice a month. With corn you can't let it suffer for lack of water, for even 4 or 5 days, up to pollination and after. We have given it deep thought and the only solution we could come up with is to dry farm $\frac{1}{2}$, either with oats, barley or wheat. Then plant the remaining to corn and if we can't get supplement water we will be able to irrigate with the two wells. By dry farming $\frac{1}{2}$ it will drastic lower the gross income, when we negotiated the lease last year we figured, as in the past, would have plenty of water. But ~~due~~ due to circumstances beyond yours or ours control, that is now not true. We contacted Water Resources Board and was informed if there is another dry year we can expect the same situation. If we dry farm $\frac{1}{2}$ we are unable to pay the rent we are now paying (\$182⁰⁰ per acre plus taxes). The most we can pay is 140⁰⁰ per acre on the entire 270 acres.

This agreement will terminate when we are assured of ample amount of water either from the slough or plan of dividend.

John P. Puckett
M. Puckett

WATER RESOURCES CONTROL BOARD

SONDERSON BUILDING
P STREET
SACRAMENTO, CALIFORNIA 95814
(916) 657-1359
FAX: 657-1485

Mailing Address

DIVISION OF WATER RIGHTS

P.O. BOX 2000, Sacramento, CA 95812-2000



June 10, 1994

TO: WATER RIGHT HOLDERS WITH PERMITS OR LICENSES IN THE
SACRAMENTO AND SAN JOAQUIN WATERSHEDS AND DELTA CHANNELS

NOTICE OF UNAVAILABILITY OF WATER

The current water year has been declared critically dry by the California Department of Water Resources. My letter of May 9, 1994 warned of impending water shortage. The rainfall in May added to the supply in some major reservoirs but has not significantly changed the critical shortage of water.

The purpose of this letter is to advise you that water will not be available for diversion under any of your permits or licenses issued by the State Water Resources Control Board (SWRCB) beginning on July 1, 1994 and continuing through August 31, 1994 unless otherwise notified. Water diverted during this curtailment period must be from alternate sources of supply, such as groundwater wells, purchased water, or redirection from earlier storage. These restrictions do not apply to those who divert under contracts or agreements with the U.S. Bureau of Reclamation or the Department of Water Resources, including individuals who are members of agencies with contracts or agreements, as long as the contractual limitations are observed.

This Curtailment Notice does not apply if there is a section of streambed between your point of diversion and either the Sacramento River, San Joaquin River, or the Delta, where no visible flow of water exists. The existence of visible flow in the stream should be determined when you are not diverting water.

Division of Water Rights (Division) staff will be checking the status of diversions under some of the projects covered by water right permits and licenses. If you are contacted by our staff, we trust we will have your full cooperation. In the event complaints of violation of permit or license terms or conditions are received from affected persons, including users holding higher priority rights, the SWRCB is required by provisions of the California Code of Regulations to investigate. Those who are found to be diverting water beyond what is legally available to them may be subject to enforcement actions, including fines of up to \$500 per day and/or cease and desist orders.

We are requesting your cooperation and assistance in complying with the constraints under your water right to conserve the limited supplies of available water.

If you have any questions with respect to this letter, an engineer from the Division is available at (916) 657-0765.

Sincerely,

Edward C. Anton, Chief
Division of Water Rights

JUN 10 1994

CITY OF LODI

MEMORANDUM, City of Lodi, Public Works Department

TO: Public Works Director

FROM: Water/Wastewater Superintendent

DATE: August 9, 1994

SUBJECT: Request For Temporary Adjustment of Lease Fees

AUG 11 1994
City Attorney's Office

Attached is a letter from one of our tenants, Bechtold and Kirshenman Farms regarding the recently granted five year lease for Parcel 2 on Exhibit A attached.

As you're aware, this 270 acre parcel was purchased several years ago for future disposal of industrial and domestic wastewater and biosolids (sludge) as Lodi grows. Currently very little or no wastewater is available to irrigate this leased parcel. (Engineering design for a distribution system is underway now, but actual construction and operation is a couple years away.)

Our tenant entered the current agreement with the above mentioned knowledge and it was reflected in the terms of the agreement. (Annual rent established at \$182/acre/year, upon delivery of wastewater annual rent goes to \$221/parcel/year.) In the interim our tenant planned to utilize inexpensive Delta water from White Slough as the primary source of irrigation water and well water as a secondary backup source.

On June 13, 1994 the City and its tenants were informed that beginning July 1, 1994 through August 31, 1994 no water could be taken from the Delta (see attached letter dated June 10, 1994 from California Water Resources Control Board).

In the attached letter, Bechtold-Kirshenman Farms proposes to dry farm 50% of the 270 acre parcel and the remaining acreage will be irrigated with well water. This will obviously drive the cost of their operation up (well pumping) and drastically reduce our tenant's income (dry farming).

Our tenant has asked for temporary rent relief until the water from the Delta is again available and/or the City can deliver wastewater on a more continuous basis.

Based on the above circumstances I believe Lodi City Council should consider a temporary reduction of rent from \$182 to \$140 per acre on the 270 acre parcel.



Fran E. Forkas
Water/Wastewater Superintendent

FEF/kf

Attachments

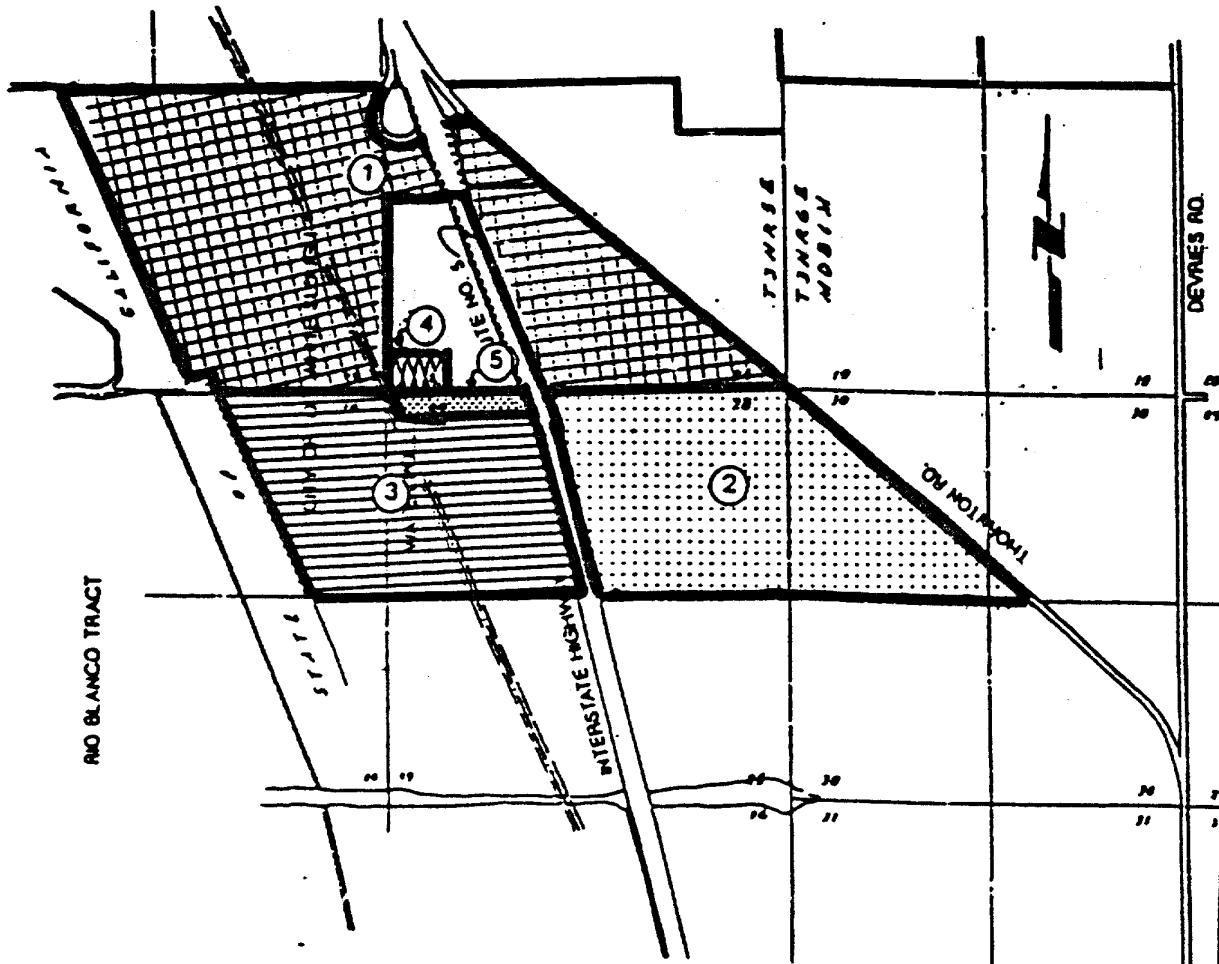
cc: Assistant Wastewater Treatment Superintendent
Bechtold-Kirshenman Farms



CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT A WHITE SLOUGH WATER POLLUTION CONTROL FACILITY LAND LEASES



NOT TO SCALE

LEGEND



① 389-acre parcel leased by Bechthold-Kirschenman Farms



② 270-acre parcel leased by Bechthold-Kirschenman Farms



③ 218-acre parcel leased by Lima Ranch



④ 10-acre parcel leased by Northern California Power Agency



⑤ 12-acre parcel to be leased by San Joaquin County Mosquito & Vector Control District

THIS LEASE, made and entered into this _____ day of _____, 1993, by and between the CITY OF LODI, a municipal corporation, hereinafter called Lessor, and BECHTHOLD-KIRSCHENMAN FARMS, hereinafter called Lessee.

W I T N E S S E T H :

1. PROPERTIES: That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Lessee, said Lessee does hereby lease, hire, and take from said Lessor, those certain properties described as follows:

Those certain properties described in Exhibit A attached hereto, and by this reference made a part hereof. Property to be leased totals 270 acres±.

2. TERM: The term of this Lease shall be for a period of five (5) years, commencing January 1, 1994, and terminating at midnight on December 31, 1998. In order that the tenants have adequate time to plan their farming operations, bids for the lease of this property after December 31, 1998, will be called for approximately one year before that date.
3. RENT: In consideration of said Lease, Lessee agrees to pay to Lessor as rent for the demised premises, the following amounts:

<u>Year</u>	<u>\$/Acre/Year</u>	<u>Annual Rent</u>
1994	\$182.00	\$49,140.00
1995	\$182.00	\$49,140.00
1996	\$182.00/\$221.00	\$49,140.00*
1997	\$182.00/\$221.00	\$49,140.00*
1998	\$182.00/\$221.00	\$49,140.00*

Rent to be paid monthly, quarterly or annually, in advance. If rent is paid annually in advance, a 2% discount on the annual rent can be taken. Rental payments shall be made before the first day of the month or quarter and shall be directed to the Public Works Department, 221 West Pine Street, P. O. Box 3006, Lodi, California, 95241-1910, for processing and shall be paid without prior notice or demand.

*Rent will be \$182.00 per acre per year until such time as water can be supplied from White Slough Water Pollution Control Facility. At the time water is available, the rent per acre will increase to \$221.00 for the acreage receiving water. Rent will remain \$182.00 per acre for acreage not supplied with water.

4. USE: The properties shall be used solely for the purpose of pasturing beef cattle or growing, cultivating, fertilizing,

LEASEBK2/TXTW.02M

- 1 -

ADD THIS PARAGRAPH

The \$182.00 per acre per year amount indicated above shall be reduced to \$140.00 per acre per year beginning September 1, 1994 and continuing until such time as the Lessee again has approval of State Water Resources Control Board (SWRCB) to use Delta waters or until Lessor can provide plant effluent.

irrigating, and harvesting of agricultural crops. During the term of this Lease, and any extension thereof, it is understood and agreed by the parties hereto that Lessee shall be required to accept industrial wastewater, treated domestic effluent, and domestic sludges from City's White Slough Water Pollution Control Facility. Lessor will make available all excess domestic effluent, at no cost to the Lessee.

It is further understood and agreed by Lessee that Lessee must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating the type of crops that can be grown on the properties during the lease term and any extension thereof. Lessee accepts the properties with the full understanding that the California Department of Health Services regulations (Title 22, Division 4), copy attached as Exhibit B, will limit Lessee to growing only fodder, fiber, or seed crops once wastewater and/or sludges are discharged on the properties. Further, Lessee shall be permitted to use the properties for any use consistent with the terms of the within Lease and those uses permitted by all governmental authorities, including, but not limited to, the California Department of Health Services. Further, Lessee agrees to manage the irrigation of the properties with industrial wastewater, treated domestic effluent, and sludges from the White Slough Facility in such a manner that it will not allow the discharge of any runoff to White Slough or adjacent private or public property, and meet all regulations imposed by all governmental authorities having proper jurisdiction, including, but not limited to, the Central Valley Regional Water Quality Control Board. Lessee shall use and occupy said premises in a quiet, lawful, and orderly manner. Lessor and Lessee further agree that they shall permit no hunting, fishing, or public access to any part of the properties, including Lessee.

5. AVAILABILITY OF LESSEE: Because of the type of operation of the White Slough Water Pollution Control Facility, it is imperative that Lessee or a representative be readily available in case plant personnel must change any plant operation. Lessee shall be responsible for keeping the City Public Works Department advised of a current telephone number and contact person.
6. REMEDIES ON DEFAULT: Should Lessee fail to pay any part of the rents herein specified at the times or in the manner herein provided, or fail to comply with or perform any other of the terms and provisions of this Lease on the part of Lessee to be performed or complied with, then, and in that event, Lessor may exercise any and all remedies provided by law or equity by reason of such default, including the right, at Lessor's option, of terminating this Lease. In any of such events, Lessor shall be entitled to the immediate possession of said leased premises, and, at its option, may enter into and upon said premises without notice to Lessee and exclude Lessee and all persons and all property therefrom, and by process of law or otherwise take and resume possession of said premises. Each and all of Lessor's remedies shall be construed as cumulative and no one of them as exclusive of the other or as exclusive of any remedy provided by law or equity.
7. RELATIONSHIP OF PARTIES: It is understood and agreed that the relationship between the parties is that of landlord and tenant and

not as a party or agent of Lessor. Lessee, or its subtenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers.

8. **DITCH, ROAD, AND PROPERTY MAINTENANCE:** Lessee shall maintain and pay all costs of maintaining the irrigation lines, ditches, fences, and all access roads located on the properties. Lessee, at its sole cost and expense, shall provide an adequate drainage system and agrees to cause to be cleaned within a reasonable time, when requested by Lessor to do so, the drainage ditches and facilities located on the properties. Lessee shall further be responsible, at its sole cost and expense, for maintaining and repairing all improvements located on the properties, including, but not limited to, wells, canals, drainage ditches, and other improvements of any nature whatsoever located on the demised premises.
9. **FLOOD RISK:** Tenant acknowledges that he is fully acquainted with the demised premises, all facilities affecting the demised premises, and the possibility that the leased premises could be flooded from many causes including, without limitation, the following:
 - A. Levee overtopping and levee failure due to natural causes such as winds, tides, barometric pressure changes, rainfall or its runoff, earthquakes, levee settlement, and rodents.
 - B. Levee overtopping and levee failure due to man-related causes including negligence of Lessor, any reclamation district or improper levee maintenance, flood fighting and/or patrol, dredging, water releases, obstruction of water flows, and water diversions.
 - C. Failure of the drainage system due to natural or man-related causes including negligence of Lessor, any reclamation district, and other governmental agency.
 - D. Failure to construct, repair, maintain, or operate levees, drainage, or irrigation facilities, or other facilities, whether due to limited funding or otherwise.

Tenant hereby expressly assumes the risk of damage arising out of the above and hereby waives the right (including the right on the part of any insurer through subrogation) to make any claim pertaining to the same as against the State of California, the United States, all reclamation districts, the counties, all other agencies of government, and Lessor and their officers, agents, and employees.
10. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign, encumber, convey, or otherwise hypothecate this Lease, in whole or any part, without first obtaining the written consent of Lessor. Lessee shall be permitted to sublet the properties to a responsible person, firm, or corporation, but any such subletting or use by another person, firm, or corporation shall in no way release Lessee from the obligation, conditions, and terms of this Lease. Lessor shall furnish in writing to Lessor the name of any subtenant, and any sublease entered into by Lessee shall incorporate the terms, provisions, and conditions of this Lease.

11. **ENTRY BY LESSOR:** Lessor shall have the right at all reasonable times during the term of this Lease to enter said leased premises for the purpose of examining or inspecting the same.
12. **REPAIRS:** Lessee shall be solely responsible for all repairs to the properties. Lessee shall notify Lessor, in writing, of any alterations or additions to the leased premises and major alternations or any alternation that would interfere with Lessor's wastewater discharges on the leased premises shall be first approved by Lessor before the same is made. All alterations, additions, or improvements made in, to, or on the demised premises shall, immediately upon the installation thereof, become and be the property of the Lessor and shall remain upon and be surrendered with the premises.
13. **SURRENDER OF PREMISES:** Lessee shall, at the termination of the term hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.
14. **FEES:** Lessee shall pay all license fees, or other fees or taxes, levied by any governmental agency which may be imposed upon the business of Lessee or its subtenant conducted upon the premises.

If any of the above charges are assessed against the real property, and because of said assessment, the Lessor pays the same, which Lessor will have the right to do regardless of the validity of any such levy, the Lessee, upon demand, will repay to the Lessor all taxes and other assessments so levied against the Lessor which are due by the Lessee.
15. **UTILITIES:** Lessee agrees to pay, during the term hereof, all utilities of any nature whatsoever used upon said leased premises except for the run-off collection system located on the property.
16. **WASTE:** Lessee shall not maintain or commit, nor suffer to be maintained or committed, any nuisance or waste in or about said leased premises, nor do or permit anything to be done in or about said premises, nor keep anything therein, which will in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy and use of said premises, which have been or may hereafter be, enacted or promulgated by any public authority.
17. **MECHANIC'S LIEN:** Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Lessee shall not create, or suffer to be created, any lien or encumbrance on said premises.
18. **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:** Lessee agrees to indemnify and save harmless Lessor from and against all claims of whatever nature arising from any act, omission, or negligence of Lessee or Lessee's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such

accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee or Lessee's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Lessee agrees to maintain in full force during the term hereof a policy of public liability insurance under which Lessee is named as insured, and containing an additional named insured endorsement naming Lessor as an additional insured, and under which the insurer agrees to indemnify and hold Lessee and Lessor harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee, or Lessee's agents or employees. The minimum limits of such insurance shall be \$1,000,00.00 (One Million Dollars). In addition to the additional named insured endorsement on Lessor's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Lessor within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Lease, shall apply and be construed as applying to any subtenant of Lessee.

19. **BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY:** If Lessee should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of this leasehold, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Lessor may, without notice or demand, terminate this Lease and forthwith reenter and repossess the properties, and remove all persons therefrom, and under no circumstances shall this Lease be assignable or transferable by operation of law.
20. **EMINENT DOMAIN:** If the whole or any portion of the premises hereby leased shall be taken by any public authority under the power of eminent domain, whether by negotiation or otherwise, then the term of this Lease shall cease as of the date possession is taken by such authority as to that portion taken, and the rental thereafter due or payable shall be reduced for the portion taken at the rental rate per acre then in effect. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the leased premises, shall be the property of Lessor. Provided, however,

that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements, and crops.

21. **ATTORNEY'S FEES:** In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, conditions, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgement therein.
22. **WAIVER:** Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.
23. **ACCEPTANCE OF LEASEHOLD ESTATE:** Lessee has examined the leased premises, knows the conditions thereof, and accepts possession thereof in their condition.
24. **TERMINATION OF LEASE:**
- A. By Lessee. Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Department of Health Services, prohibit the growing of any crop on the proerties. In the event Lessee terminates this Lease as provided above, rent shall be prorated to the date of termination.
- Lessee shall also be permitted to terminate this Lease for any reason whatever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this lease. Lessee shall be responsible for all rents due for the entire calendar year in which such notice is given.
- B. By Lessor. Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for any City function or purpose approved by the City Council. In such cases, the Lessor shall give to the Lessee six (6) months' written notice thereof, and rent shall be prorated.

25.

ADD THESE WORDS

26.

any other

27. **BINDING ON HEIRS:** This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the

CHANGE APPROVED:

(Lessee)
(Lessor)

respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease, or of any interest therein, or to the subletting or underletting of said leased premises or any part thereof.

that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements, and crops.

21. ATTORNEY'S FEES: In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, conditions, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgement therein.

22. WAIVER: Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.

23. ACCEPTANCE OF LEASEHOLD ESTATE: Lessee has examined the leased premises, knows the conditions thereof, and accepts possession thereof in their condition.

24. TERMINATION OF LEASE:

A. By Lessee. Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Department of Health Services, prohibit the growing of any crop on the properties. In the event Lessee terminates this Lease as provided above, rent shall be prorated to the date of termination.

Lessee shall also be permitted to terminate this Lease for any reason whatever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this lease. Lessee shall be responsible for all rents due for the entire calendar year in which such notice is given.

B. By Lessor. Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for any City function or purpose approved by the City Council. In such cases, the Lessor shall give to the Lessee six (6) months' written notice thereof, and rent shall be prorated.

25.

ADD THESE WORDS

26.

any other

27. BINDING ON HEIRS: This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the

CHANGE APPROVED:

(Lessee)
(Lessor)

that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements, and crops.

21. **ATTORNEY'S FEES:** In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, conditions, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgement therein.
22. **WAIVER:** Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.
23. **ACCEPTANCE OF LEASEHOLD ESTATE:** Lessee has examined the leased premises, knows the conditions thereof, and accepts possession thereof in their condition.
24. **TERMINATION OF LEASE:**
- A. By Lessee. Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Department of Health Services, prohibit the growing of any crop on the properties. In the event Lessee terminates this Lease as provided above, rent shall be prorated to the date of termination.
- Lessee shall also be permitted to terminate this Lease for any reason whatever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this lease. Lessee shall be responsible for all rents due for the entire calendar year in which such notice is given.
- B. By Lessor. Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for any City function or purpose approved by the City Council. In such cases, the Lessor shall give to the Lessee six (6) months' written notice thereof, and rent shall be prorated.
25. **CONTRACT:** This written agreement constitutes the entire contract between the Lessee and Lessor, and no representation or agreement, unless expressed herein, shall be binding on the Lessor or Lessee.
26. **ACCESS:** Lessee shall be permitted reasonable access over adjacent City property owned by Lessor for ingress and egress purposes.
27. **BINDING ON HEIRS:** This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the

CHANGE APPROVED:

LEASEBK2/TXTW.02M

- 6 R -

(Lessee)
(Lessor)

respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease, or of any interest therein, or to the subletting or underletting of said leased premises or any part thereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date and year first above written.

CITY OF LODI, a municipal corporation
Hereinabove called "Lessor"

BECHTHOLD-KIRSCHENMAN FARMS
Hereinabove called "Lessee"

By THOMAS A. PETERSON, City Manager

By Alfred B. Bechthold

Attest:

John Kirschenman

JENNIFER M. PERRIN, City Clerk

Approved as to Form:

BOB MCNATT, City Attorney

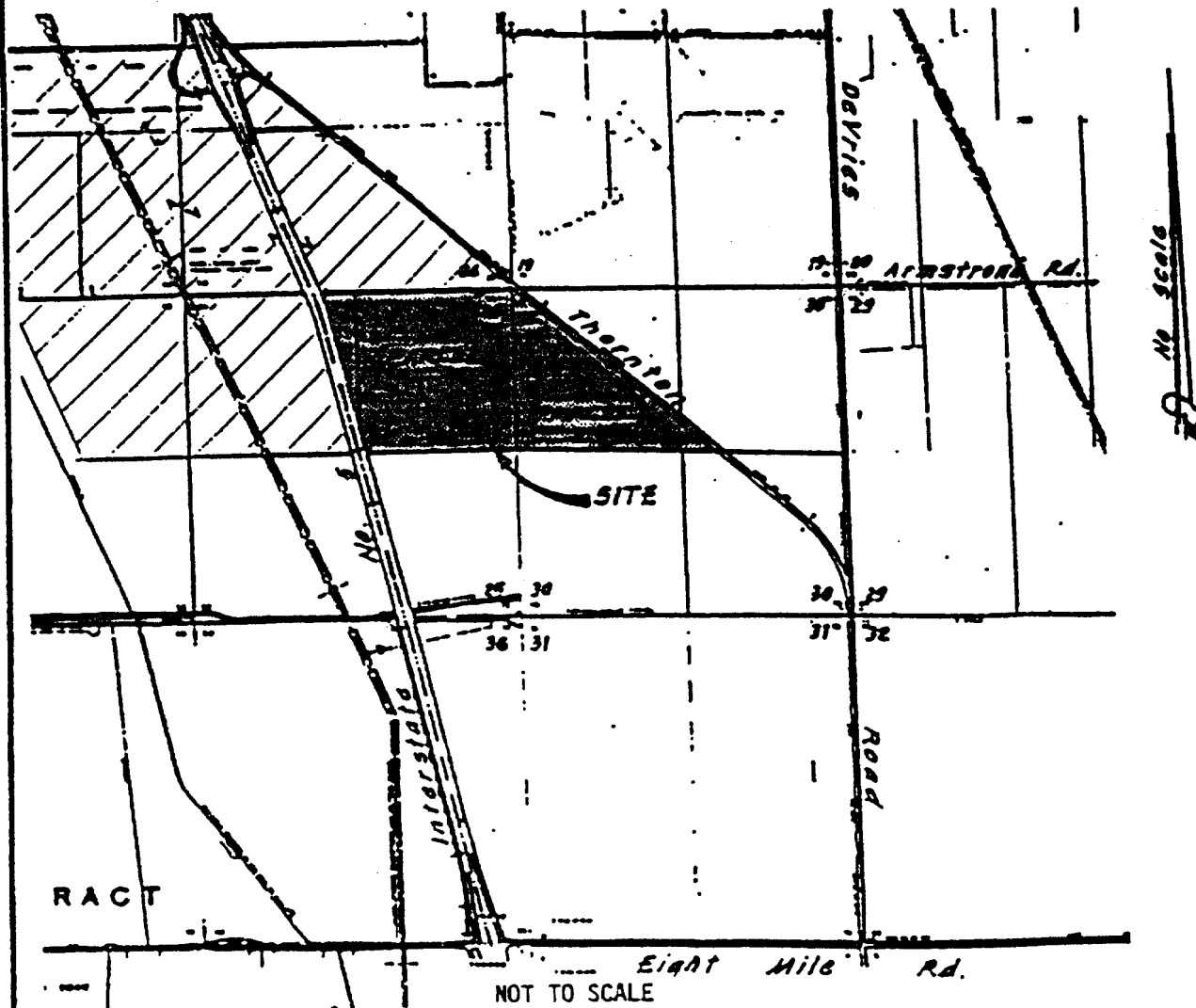


CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT A

Lease for 270 acres + at White Slough
Water Pollution Control Facility



The property to be leased is described as that real property situated in the City of Lodi, County of San Joaquin, State of California described as follows:

PARCEL ONE:

The North one-half (N 1/2) of Section 25, T3N, R5E, MDB&M, according to the Official Plat thereof.

Excepting therefrom any portion thereof which lies westerly of the easterly line of that certain land conveyed to State of California by Deed recorded November 3, 1970 in Book 3455 of Official Records at Page 428 in the Office of the County Recorder, San Joaquin County, California.

PARCEL TWO:

All that portion of the North one-half (N 1/2) of Section 30, T3N, R5E, MDB&M, according to the Official Plat thereof, lying West and South of the southwesterly line of Thornton Road.

CITY COUNCIL

JACK A. SIEGLOCK, Mayor
STEPHEN J. MANN
Mayor Pro Tempore
RAY C. DAVENPORT
PHILLIP A. PENNINO
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
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THOMAS A. PETERSON
City Manager
JENNIFER M. PERRIN
City Clerk
BOB McNATT
City Attorney

September 1, 1994

Bechthold-Kirschenman Farms
18989 North Davis Road
Lodi, CA 95242

SUBJECT: Modification of White Slough Lease Agreement with
Bechthold-Kirschenman Farms

Enclosed is a copy of background information on an item that is on the City Council agenda of Wednesday, September 7, 1994, at 7 p.m. The meeting will be held in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Jennifer Perrin, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call me at (209) 333-6706.


Jack L. Ronsko
Public Works Director

JLR/lm

Enclosure

cc: City Clerk ✓